IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL W.P.NO.1602 OF 2006

Bhaskar Waman Gawale ..Petitioner

Vs.

State of Maharashtra ..Respondents

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Mr.N.R.Bubna counsel for petitioner
Mrs.M.M.Deshmukh A.P.P. for the State

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CORAM: SMT.V.K.TAHILRAMANI,J.
DATE : FEBRUARY 27, 2007

P.C.

1. Heard Mr.Bubna, the learned counsel for the petitioner and Mrs.M.M.Deshmukh the learned A.P.P. for the State.

2. The petitioner is facing trial in Sessions Case No.5 of 2004 which is pending before the learned IInd Adhoc Additional Sessions Judge, Malegaon, District Nasik. In the said case, charge was framed against the petitioner under Section 376 read with Section 511 of IPC. The petitioner preferred an application for alteration of charge before the learned Sessions Judge. It was prayed that charge under Section 376 read with Section 511

of IPC be altered to Section 354 or 509 of IPC. The learned Sessions Judge rejected the said application. Being aggrieved thereby, this petition has been preferred.

3. It is the prosecution case that the petitioner was working as a teacher in the primary school. He called four minor girls i.e. Shankuntala, Swati, Yogita and Sarika. He made Shakuntala and Yogita wait outside his class-room. He took Swati and Sarika inside the class-room and asked both the girls to remove their clothes. However, they refused to do so. On their refusal, the petitioner removed their clothes. Thereafter, he removed his pant and he slept on the person of both these girls. The statements of Swati and Sarika have been recorded. In fact, Sarika has been examined as well as cross-examined. However, as far as second witness Swati is concerned, her cross-examination is in progress and is not yet complete. It is at this stage that the application for alteration of charge came to be filed by the petitioner.

4. On going through the F.I.R. the prosecution

case as stated above is reflected therein. Mr.Bubna, the learned counsel for the petitioner submitted that evidence of these two girls does not show that there was any attempt to penetrate by the accused person and hence, it cannot be said that there was any attempt to commit rape.

5. The test which is to be applied at this stage, is not the same which would be applied after the entire evidence has been led and the case reaches the stage of passing of final judgment. At this stage, it is not necessary for the Court to see whether there is sufficient ground for conviction of the accused or whether the trial would definitely end in conviction. At this stage, the truth, veracity and the effect of the evidence which is proposed to be led or has been led, cannot be meticulously judged but one can only prima facie consider whether there is sufficient material to proceed. Looking to the facts as stated in F.I.R. and the material on record in my opinion, there is suficient material to proceed. Hence, no case is made out for alteration of charge. Hence, petition is rejected.

[V.K.Tahilramani, J.]